IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Abdul Sattar.
vs.
Mohammed Rafiq and others.

S.B.CIVIL SECOND APPEAL NO.6/2007 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 5.9.2006 PASSED BY SHRI PANKAJ BHANDARI, ADDITIONAL DISTRICT JUDGE NO.3, JODHPUR IN CIVIL APPEAL DECREE NO.68/2005.

DATE OF JUDGMENT ::: 21.3.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. NR Choudhary, for the appellant.
Mr. Om Prakash Mehta, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The appellant/defendant is aggrieved against the judgments and decrees dated 14.7.2005 and 5.9.2006

passed by the trial court and first appellate court respectively.

The trial court decreed the plaintiffs' suit for eviction of the appellant/tenant on the ground of personal bonafide necessity.

In the suit, the defendant prayed for fixation of standard rent on the ground that originally the suit property was given on rent of Rs.5/- per month and thereafter, it was increased to Rs.9/- per month. The learned trial court held that the defendant is not entitled to get the standard rent fixed while deciding issue no.8 but at the same time, held the standard rent of the suit premises can be Rs.100/- per month. It will be relevant to mention here that the plaintiffs' case was that the agreed rent of the suit premises was Rs.100/- per month and standard rent is more.

The defendant preferred regular first appeal before the first appellate court. The first appellate court dismissed the appeal and upheld the finding of the trial court regarding personal bonafide necessity of the plaintiffs for the suit premises.

Learned counsel for the appellant vehemently submitted that once the trial court held that the defendant/appellant is not entitled to get the standard rent fixed, then the trial court had no jurisdiction to

declare the standard rent of the suit premises as Rs.100/-. It is also submitted that the first appellate court has not decided this question despite the fact that the appellant specifically took objection in the memo of appeal about fixing the standard rent by the trial court.

I considered the submission of learned counsel for the appellant and perused the reasons given by the two courts below.

So far as finding of personal bonafide necessity of the plaintiffs is concerned, that finding of fact is based on appreciation of evidence and I do not find any illegality in the said finding.

So far as contention of learned counsel for the appellant that the issue no.8 has been decided by the trial court against the defendant and the trial court could not have determined the standard rent and, therefore, could not have fixed the standard rent of the suit premises as Rs.100/- is concerned, it is clear from the language of Section 6 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act of 1950') that any of the parties – tenant or landlord can file suit for fixation of standard rent and the criteria for fixing the standard

rent is given in Sub-sections of Section 6 of the Act of 1950. In the trial court, the defendant submitted counter claim for getting the rent reduced from Rs.9/- to Rs.5/-. It appears from the contention of the plaintiffs as well as the evidence which came on the record in that issue that the landlord could prove that the standard rent of the premises can be Rs.100/-. It will be again worthwhile to notice that the issue no.8 framed by the trial court was whether the defendant is entitled to get the standard rent fixed and if so, then how much can be rent of the suit premises.

It appears from the facts mentioned in the judgment of the trial court that the plaintiffs specifically pleaded that the rent of the suit premises can be Rs.500/- per month because of the reason that for the nearby houses, tenants are giving rent at the rate of Rs.500/-. The plaintiffs also pleaded that the area of the house is 304 square meter and the market rate of the land is Rs.3,000/- per square meter and, therefore, the rent of Rs.500/- can be fetched by the property.

In view of the above reasons, when the trial court specifically decided the issue no.8 in favour of the plaintiffs on the basis of evidence which were relevant for the purpose of deciding the issue no.8, I do not find that the trial court could not have determined the standard rent of the suit premises and could not have

determined the rent which may be beyond the rent projected by the defendant.

The appellant submitted that he has ground for challenging the fixation of standard rent. But it appears from the judgment of the first appellate court that no argument was pressed by the tenant on this issue before the first appellate court. It is settled law that the argument which has not been raised before the court below cannot be raised straightway in second appeal and that too without filing the review petition.

In view of the above, I do not find any substantial question of law involved in this appeal and this second appeal deserves to be dismissed.

At this juncture, learned counsel for the appellant prayed that sufficient time may be given to the appellant to vacate the suit property because the appellant has a large family.

Learned counsel for the respondent has serious objection to the grant of time to the appellant.

I considered this prayer of learned counsel for the appellant and looking to the facts of the case, this Court is of the view that the appellant be granted time upto 31.3.2008 to vacate the suit premises.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of two months from today that he shall hand over the vacant possession to the landlord by or before 31.3.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.4.2008. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court or pay directly to the landlord.

In case of non-compliance of the order or default in payment of amount mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya